IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition no. 1505 (SS) 2004.

Mohan Chandra Joshi S/o Sri Manorath Joshi,
Resident of Wadda, Tehsil & District
Pithoragarh. .....Petitioner.

Versus

1. State of U.P., through Principal Secretary,
   Department of Education, U.P. Shasan, Lucknow,
2. Director, Education (Basic), U.P. Allahabad,
3. State of Uttaranchal, through Secretary,
   Department of Education,
   Uttaranchal Shasan, Dehradun,
4. Director, School Education, Uttaranchal,
   Dehradun,
5. District Basic Education Officer/
   Assistant District Education Officer, (Basic),
   Pithoragarh. .....Respondents.

Sri Manoj Tewari, Adv. & Sri Alok Mehra, learned counsel for the petitioner,
Smt. Beena Pandey, learned Standing Counsel for state of U.P. / respondent nos. 1 & 2,
Sri Syed Nadeem, Brief Holder for State of Uttaranchal/ respondent nos. 3 & 5,

Hon'ble M.M. Ghildiyal, J

Heard Sri Alok Mehra, holding brief of Sri Manoj Tewari, learned counsel for the petitioner, Smt. Beena Pandey, learned Standing Counsel for state of U.P. / respondent nos. 1 & 2, and Sri Syed Nadeem, Brief Holder for State of Uttaranchal/ respondent nos. 3 to 5.

The petitioner has filed the present writ petition seeking writ, order or direction in the nature of mandamus commanding the respondents to forthwith grant family pension

to the dependents of late Smt. Geeta Joshi in accordance with the Government Policy alongwith arrears and interest on the delayed payment within a timeframe specified by this Court.

The facts of the case, in brief, are that late Smt. Geeta Joshi was legally wedded wife of the petitioner who served as Assistant Teacher Primary School in district Pithoragarh. Late Smt. Geeta Joshi was appointed as Assistant Teacher on 14.08.1971 and she died in harness on 11.09.1980 while in service. At the time of her death, she was serving at Primary School, Bharkatiya. Smt. Joshi expired leaving behind her husband- the petitioner and two sons, namely, Girish Chandra Joshi and Tribhuwan Joshi aged about 8 years and 5 years respectively at the time of the death of their mother. The entire family was dependant upon Smt. Geeta Joshi. The petitioner moved an application for grant of family pension before the District Education Officer, Pithoragarh, however the same was not granted to the petitioner. A Govt. Order was issued by the State of U.P. on 31st March 1982 providing family pension to the teachers serving in Institutions run by Basic Education Board and also to the teachers of Aided Institutions. Another Govt. Order was issued on 16.06.1984 clarifying the earlier G.O. dated 31st March 1982. Though the petitioner was entitled to get family pension after the death of his wife late Smt. Geeta Joshi however the respondents did not pay any heed towards it, consequently he was constrained to file the present writ petition.

Time was granted to the respondents to file counter affidavit, however the respondent nos. 1 & 2 have not filed any counter affidavit till date. The respondent nos. 3,4, & 5 have filed counter affidavit. In para-6 of the counter affidavit, the

respondents have taken stand that at the time of death of petitioner's wife i.e. on 11.09.1980, there was no Govt. Order to provide family pension in the Basic Education Board, nor the petitioner had applied for family pension immediately after death of his wife. On the application filed by Sri Girish Ch. Joshi- the son of the petitioner, the then Basic Education Officer vide its letter dated 26th September 1997 had referred the case to Account Officer, Basic Education Board, Pithoragarh. In para-9 of the counter affidavit the respondents have taken stand that the pension scheme is applicable to the employees of Basic Education Board from 01.10.1981, thus the petitioner is not entitled to get family pension, as his wife was died on 11.09.1980 prior to enforcement of Govt. Order dated 01.10.1981.

Learned counsel for the petitioner has drawn my attention to the Govt. Order dated 31st March 1982 annexed as annexure no. 3 to the writ petition, which provides that the teachers of Primary Schools shall also get family pension w.e.f. 1st October 1981, provided they are covered under the New Pension Scheme enforced on 8th March 1978. The relevant extract is reproduced hereunder:-

" उपरोक्त वर्ग के अध्यापक और उनके आश्रित पारिवारिक पैंषन दिये जाने की शासन से बराबर मांग कर करते आ रहे थे जिस पर शासन द्वारा सम्यक् रूप से विचार किया गया और उनकी मांग को शासन द्वारा स्वीकार कर लिया है। अतः मुझे यह कहने का निर्देष हुआ है कि पार्ष्वांकित षासनादेषों में पारिवारिक पैंषन न दिये जाने की षर्त को निरस्त करते हुए राज्यपाल महोदय उक्त षासनादेषों में निहित प्राविधानों के अर्न्तगत सामान्य भविष्य निधि, एवं नवीन पैंषन योजना से आवृत्त सहायता प्राप्त जूनियर हाईस्कूल, उच्चतर माध्यमिक विद्यालय तथा डिग्री कालेज एवं उत्तर प्रदेष बेसिक षिक्षा परिषद् द्वारा संचालित प्राईमरी एवं जूनियर हाईस्कूल के समस्त षिक्षकों को राजकीय कर्मचारियों की

भांति पारिवारिक पैंषन की सुविधा दिनांक 1 अक्तूबर 1981 से दिये जाने की स्वीकृति प्रदान करते है।"

Para-4 of the aforesaid Govt. Order provides that if any person while in service has completed 7 years continuous service, and has died, in that case family pension will be payable for a period of first 7 years from the date of his death or till he attains age of 65 years, in case he is alive, whichever is earlier. The relevant paragraphs of the Govt. Order is reproduced hereunder:-

"(क) सेवारत रहते हुए मृत्यु हो जाने की दषा में यदि मृतक के कम ने कम सात वर्ष की अविरल सेवा प्रदान की है तो मृत्यु की तिथि के बाद की तिथि से प्रारम्भिक सात वर्ष या उस तिथि तक जब उसने जीवित रहने की दषा में 65 वर्ष की आयु प्राप्त कर ली होती, जो भी पहले समाप्त हो, पारिवारिक पैंषन मूल वेतन की आधी अथवा इस योजना के अधीन अन्यथा देय धनराषि का दुगुना जो भी कम हो, के बराबर होगी।"

Consequent upon the G.O. issued on 31st March 1982 facility for family pension was provided w.e.f. 1st October 1981. The Govt. of U.P. has issued a G.O. dated 16th June 1984 clarifying the G.O. dated 31st March 1982 to the effect that the family pension will be payable to the dependants of the deceased w.e.f. 01.10.1981 whether the teacher died before or after 01.10.1981. But no arrear will be payable to the dependants of the deceased with the retrospective effect i.e. prior to 01.10.1981, however the pension will be payable only w.e.f. 01.10.1981. The relevant extract is reproduced hereunder:-

" उपर्युक्त विषयक शासनादेष संख्या 6246 / 15–8–3004 (16)/77 दिनांक 31 मार्च 1982 का स्पष्टीकरण करते हुए मुझे यह कहने का निर्देष हुआ है कि जिला विद्यालय निरीक्षक, मुजफ्रपुर ने अपने पत्रांक पारि0 (पैंषन) 7472–73/83–84 दिनांक 21.01.1984

द्वारा यह पृच्छा की है कि किसी अध्यापक की मृत्यु यदि 01.10.1981 के पूर्व हो गयी है तो उसके आश्रितों को पारिवारिक पैंषन का लाभ मिलेगा या नहीं, इस संम्बन्ध में यह स्पष्ट किया जाता है कि प्रष्नगत राजाज्ञा के उपबन्धों के अधीन यदि मृतक अध्यापक के आश्रितों को अन्यथा पारिवारिक पैंषन देय हो तो चाहे अध्यापक की मृत्यु 01.10.1981 के पूर्व हुई हो अथवा बाद में हुई हो, उसके आश्रितों को दिनांक 01.10.1981 से राजाज्ञा के प्रविधनों के अधीन पारिवारिक पैंषन स्वीकृत की जायेगी। अग्रेतर यह भी स्पष्ट किया जाता है कि मृतक अध्यापक के आश्रितों को 01.10.1981 से पूर्व की अवधि के लिए कोई अवषेष आदि के भुगतान का प्रष्न नहीं उठता क्योंकि प्रष्नगत योजना 01.10.1981 से लागू की गयी है।"

Undisputedly, the petitioner's wife was appointed as Assistant Teacher on 14.08.1971 and she expired on 11.09.1980, thus she had completed more than 7years' service as is required under the G.O. dated 31st March 1982 to get family pension, provided she is covered by the G.O. dated 8th March 1978. According to the G.O. dated 16th June 1984, the petitioner is entitled to get family pension w.e.f. 01.10.1981 till 10.09.1987. There is no rebuttal of the averments made in the writ petition that the petitioner is entitled to get family pension in pursuance of the G.O. dated 31st March 1982 and G.O. dated 16th June 1984. In the counter affidavit filed by the respondent nos. 3 to 5, the stand taken by the respondents is that the petitioner has not applied for family pension immediately after the death of his wife, but I find no force in this argument. In case, if the petitioner is entitled to get family pension whether he applied or not for the same, it was the duty of the Department to grant family pension to the legal him of the deceased employee.

In the circumstances and for the reasons recorded above, the Director of Education, U.P. Allahabad is directed to make payment of family pension to the petitioner as per Rules, provided there is no other legal hurdle in making such payment,

within a period of three months from the date of production of a certified copy of this order.

With these directions, the writ petition is finally disposed of. No order as to costs.

(M.M. Ghildiyal, J.)

December 1, 2006
NCM: